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WENDY J. UTSUMI 6340A
Regulated Industries Complaints Office
Department of Commerce and Consumer Affairs
State of Hawaii
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235 South Beretania Street, Suite 900
Honolulu, Hawaii 96813
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DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

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HEARINGS OFFICE

Attorney for Department of Commerce
and Consumer Affairs

CONTRACTORS LICENSE BOARD
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

HEARINGS OFFICE

2009 MAR 23 P 2:18

DEPT OF COMMERCE
AND CONSUMER AFFAIRS

In the Matter of the Contractors' Licenses of) CLB 2007-3-L
)
HIROTA PAINTING COMPANY, INC.)
) SETTLEMENT AGREEMENT PRIOR TO
and) FILING OF PETITION FOR DISCIPLINARY
) ACTION AND BOARD'S FINAL ORDER;
) EXHIBIT "1"
HERBERT M. HIROTA,)
)
)
Respondents.)

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SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION
FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER

Petitioner, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS'
REGULATED INDUSTRIES COMPLAINTS OFFICE (hereinafter "RICO" or "Petitioner"),
through its undersigned attorneys, Respondent HIROTA PAINTING COMPANY, INC.
(hereinafter "Respondent Hirota Painting"), and Respondent HERBERT M. HIROTA
(hereinafter "Respondent Hirota"), enter into this Settlement Agreement on the terms and
conditions set forth below.

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A. UNCONTESTED FACTS

1. At all relevant times herein, Respondent Hirota Painting was licensed by the Contractors License Board (hereinafter the "Board") as a general contractor under License Number CT 787. The license was issued on or about July 1, 1958. The license will expire on or about September 30, 2010.

2. At all relevant times herein, Respondent Hirota was licensed by the Contractors License Board (hereinafter the "Board") as a general contractor under License Number CT 12158. The license was issued on or about August 1, 1983. The license will expire on or about September 30, 2010.

3. At all relevant times herein, Respondent Hirota was the Responsible Managing Employee for Respondent Hirota Painting.

4. The mailing address for purposes of this action for Respondent Hirota Painting and Respondent Hirota (hereinafter collectively referred to as "Respondents") is c/o S. Raymond Okuma, Esq., 902 City Financial Tower, 201 Merchant Street, Honolulu, Hawaii 96813-2929.

5. RICO received information Respondent Hirota entered into a Deferred Acceptance of Guilty Plea to Theft in the First Degree based on Respondent Hirota's involvement with a bid-rigging scheme involving the State of Hawaii Department of Transportation's Airports Division. True and correct copies of the Order and Terms and Conditions of Deferred Acceptance of Guilty Plea filed December 13, 2006 in State of Hawaii v. Herbert M. Hirota (Cr. No. 04-1-0019) are attached hereto as Exhibit "1."

6. RICO alleges that Respondents engaged in professional misconduct.

7. The foregoing allegations, if proven at an administrative hearing before the Board, would constitute violations of the following statute(s) and/or rule(s): Hawaii Revised Statutes ("HRS") § 444-17(1) (dishonest or deceitful conduct).

8. The Board has jurisdiction over the subject matter herein and over the parties hereto.

B. REPRESENTATIONS BY RESPONDENTS:

1. Respondents are fully aware that Respondents have the right to be represented by an attorney and are represented in this matter by S. Raymond Okuma, Esq., 902 City Financial Tower, 201 Merchant Street, Honolulu, Hawaii 96813-2929.

2. Respondents enter into this Settlement Agreement freely, knowingly, voluntarily, and under no coercion or duress.

3. Respondents are aware of the right to have a hearing to adjudicate the issues in the case. Pursuant to HRS § 91-9(d), Respondents freely, knowingly, and voluntarily waive the right to a hearing and agree to dispose of this case in accordance with the terms and conditions of this Settlement Agreement.

4. Respondents being at all times relevant herein licensed as contractors by the Board acknowledge that Respondents are subject to penalties including but not limited to, revocation, suspension or limitation of the licenses and administrative fines, if the foregoing allegations are proven at hearing.

5. Respondents do not admit to violating any law or rule, but acknowledge that RICO has sufficient cause to file a Petition for Disciplinary Action against Respondents' licenses.

6. Respondents enter into this Settlement Agreement as a compromise of the claims and to conserve on the expenses of proceeding with an administrative hearing on this matter.

7. Respondents agree that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO Case No. CLB 2007-3-L.

C. TERMS OF SETTLEMENT:

1. Probation. Respondents' contractor's licenses are hereby placed on probation for a period of five years. During the probationary period, Respondents agree to comply with the following terms and conditions:

2. Administrative fine. Respondents agree to pay, jointly and severally, a fine in the amount of FIVE THOUSAND NO/100 DOLLARS (\$5,000.00). Payment shall be made by **cashier's check or money order made payable to "DCCA - Compliance Resolution Fund"** and mailed to the Regulated Industries Complaints Office, Attn: Wendy Utsumi, Esq., 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813. Payment of the fine shall be due at the time this fully executed Settlement Agreement is returned to RICO.

3. Comply with terms of the criminal probation. Respondent Hirota agrees to comply and fully satisfy the terms and conditions of deferral in State of Hawaii v. Herbert M. Hirota (Cr. No. 04-1-0019).

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4. Failure to Comply with Settlement Agreement. If Respondents fail to fully and timely comply with the terms of this Settlement Agreement as set forth in paragraph(s) C.1 through C.3 above, Respondents' licenses shall be automatically revoked upon RICO's filing of an affidavit with the Board attesting to such failure. In case of such revocation, Respondents shall turn in all indicia of the licenses to the Executive Officer of the Board within ten (10) days after receipt of notice of the revocation. In case of such revocation, Respondents understand Respondents cannot apply for new licenses until the expiration of at least five (5) years after the effective date of the revocations. Respondents understand that if Respondents desire to become licensed again, Respondents must apply to the Board for new licenses pursuant to and subject to HRS §§ 92-17, 436B-21, and all other applicable laws and rules in effect at the time.

5. Possible further sanction. The Board, at its discretion, may pursue additional disciplinary action as provided by law to include further fines and other sanctions as the Board may deem appropriate if Respondents violate any provision of the statutes or rules governing the conduct of contractors in the State of Hawaii, or if Respondents fail to abide by the terms of this Settlement Agreement.

6. Approval of the Board. Respondents agree that, except for the representations, agreements and covenants contained in Paragraphs C.7, C.8, C.9 and C.10 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is approved by the Board.

7. No Objection if Board Fails to Approve. If the Board does not approve this Settlement Agreement, does not issue an order pursuant thereto, or does not approve a lesser remedy, but instead an administrative hearing is conducted against Respondents in the Board's usual and customary fashion pursuant to the Administrative Procedure Act, Respondents agree

that neither Respondents nor any attorney that Respondents may retain, will raise as an objection in any administrative proceeding or in any judicial action, to the Board's proceeding against Respondents on the basis that the Board has become disqualified to consider the case because of its review and consideration of this Settlement Agreement.

8. Any Ambiguities Shall be Construed to Protect the Consuming Public. It is agreed that any ambiguity in this Settlement Agreement is to be read in the manner that most completely protects the interests of the consuming public.

9. No Reliance on Representations by RICO. Other than the matters specifically stated in this Settlement Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondents to induce entry into this Settlement Agreement, and Respondents are not relying upon any statement, representation or opinion or promise made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Settlement Agreement or concerning any other matter.

10. Complete Agreement. This Settlement Agreement is a complete settlement of the rights, responsibilities and liabilities of the parties hereto with respect to the subject matter hereof; contains the entire agreement of the parties; and may only be modified, changed or amended by written instrument duly executed by all parties hereto.

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IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

DATED: Honolulu, Hawaii, MARCH 4 2009
(CITY) (STATE)

HIROTA PAINTING COMPANY, INC.

By: [Signature]
Its PRESIDENT

DATED: Honolulu, Hawaii, MARCH 4 2009
(CITY) (STATE)

[Signature]
HERBERT M. HIROTA
Respondent

DATED: Honolulu, Hawaii, MARCH 4 2009.

[Signature]
DARIA A. LOY-GOYO
WENDY J. UTSUMI
Attorneys for Department of Commerce and
Consumer Affairs

APPROVED AS TO FORM:


[Signature]
S. RAYMOND OKUMA
Attorney for Respondents

IN THE MATTER OF THE CONTRACTORS' LICENSES OF HIROTA PAINTING
COMPANY, INC. AND HERBERT M. HIROTA ; SETTLEMENT AGREEMENT PRIOR TO
FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER;
EXHIBIT "1"; CASE NO. CLB 2007-3-L

APPROVED AND SO ORDERED:
CONTRACTORS LICENSE BOARD
STATE OF HAWAII



TADY T. ARISUMI
Chairperson



F. M. SCOTTY ANDERSON
Vice Chairperson



NEAL ARITA

ERIC CARSON



RANDALL B. C. LAU

RONALD K. OSHIRO



DARYL SUEHIRO

MAR 20 2009

DATE



GUY M. AKASAKI

WILLIAM R. BROWN

JOSEPH S. KINDRICH, II



AUDREY E. J. NG, ESQ.



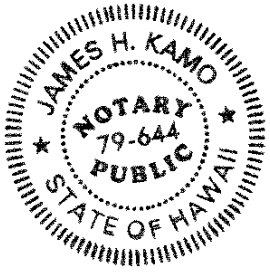
DENNY R. SADOWSKI

GERALD YAMADA

PVL 07/03/08

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

On this 4 day of MARCH, 2009, before me personally appeared HERBERT A. HIETA to me known to be the person described, and who executed the foregoing instrument on behalf of HIETA PAINTING COMPANY, INC as PRESIDENT, and acknowledged that he/she executed the same as his/her free act and deed.

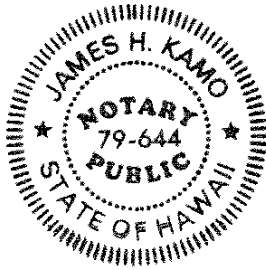


James H. Kamo
Name: JAMES H. KAMO
Notary Public, State of HAWAII
My Commission expires: 9-27-2011

Doc Date: 4/MARCH 2009 # Pages: 8
Name: HERBERT A. HIETA 137 Circuit
Doc. Description: SETTLEMENT AGREEMENT
PRIOR TO FILING OF PETITION FOR ACTION
James H. Kamo MAR 4 2009
Signature Date
NOTARY CERTIFICATION

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

On this 4 day of MARCH, 2009 before me personally appeared
HERBERT A HIROTA, to me known to be the person described and who executed the
foregoing instrument and acknowledged the same as his/her free act and deed.



James H Kamo
Name: JAMES H KAMO
Notary Public - State of HAWAII

My commission expires: 9-27-2011

Doc Date: 4 MAR 2009 # Pages: 8
Name: HERBERT A HIROTA 1ST Circuit
Doc. Description: SETTLEMENT AGREEMENT
PRICE TO FILING & PETITION FOR ACTION
James H Kamo MAR 4 2009
Signature Date
NOTARY CERTIFICATION

STATE OF HAWAII CIRCUIT COURT OF THE FIRST CIRCUIT		ORDER GRANTING MOTION FOR DEFERRED ACCEPTANCE OF GUILTY PLEA		CASE NUMBER: Cr. No. 04-1-0019
STATE OF HAWAII VS. (DEFENDANT) HERBERT HIROTA		DATE OF PLEA: January 22, 2004		REPORT NUMBER(S): Ct. I: AG No 03-17741
INFORMATION REDACTED		DATE MOTION GRANTED: December 13, 2006		
Defense Counsel: S. Raymond Okuma				
ORIGINAL CHARGE(S): Ct. I: THEFT IN THE 1ST DEGREE (§708-830(2) and 708-830.5(1)(a), H.R.S.)		CHARGE(S) TO WHICH DEFENDANT PLED GUILTY: Ct. I: THEFT IN THE 1ST DEGREE (§708-830(2) and 708-830.5(1)(a), H.R.S.)		
Deferral Period: Five (5) years. See Attached (Terms and Conditions of Deferral)			Defendant shall provide specimen samples and print impressions as required by H.R.S. Chap. 844D.	
<p>The Defendant entered a plea of GUILTY in this case on the date and to the charge(s) indicated above.</p> <p>The Court finds that the Defendant entered the plea knowingly, intelligently, and voluntarily, with an understanding of the nature of the charge(s) and the consequences of the plea.</p> <p>It appears to the Court that the Defendant is not likely to again engage in criminal conduct and that the ends of justice and the welfare of society do not require that the Defendant should presently suffer the penalty imposed by law; THEREFORE,</p> <p>IT IS HEREBY ORDERED that the Defendant's motion for DEFERRED ACCEPTANCE OF GUILTY PLEA be GRANTED and that further proceedings in this case be deferred for the period indicated above, from the date the motion was granted, on the terms and conditions on the reverse and/or attached, under supervision by the Adult Client Services Branch.</p>				
DATE	JUDGE	SIGNATURE		
December 13, 2006	RICHARD K. PERKINS	<i>Richard K. Perkins</i>		
NOTICE OF ENTRY				
THIS ORDER HAS BEEN ENTERED AND COPIES MAILED OR DELIVERED TO ALL PARTIES.				
DATE	CLERK	<div style="text-align: right;"> <p>FILED</p> <p><i>Dec 13 2006</i></p> <p><i>11:00</i> a clock <i>AM</i></p> <p><i>M. Sampaio</i></p> <p>Clerk, Eighth Division</p> </div>		
December 13, 2006	M. Sampaio <i>MS</i>			
<p>I do hereby certify that this is a full, true and correct copy of the original on file in this office.</p> <p><i>[Signature]</i></p> <p>Clerk, Circuit Court, First Circuit</p>				

TO DEFENDANT, HERBERT HIROTA

IT IS THE ORDER OF THE COURT that during the period of deferral of further proceedings, you, the above named Defendant, shall be under the supervision of the Adult Client Services Branch, and shall comply in all respects with the following terms and conditions:

1. You shall not commit another federal or state crime during your deferred term;
2. You shall report to your probation officer as ordered by the Court or by your probation officer. After this hearing or upon your release from confinement, you are ordered to report immediately to:

Adult Client Services
777 Punchbowl Street
Honolulu, Hawaii 96813
(808) 539-4500;
3. You shall not leave the island of O'ahu unless you first obtain permission to leave from your probation officer or the Court;
4. You shall report any change of address, telephone number, or employment to your probation officer before any such change;
5. You shall promptly notify your probation officer if you are arrested or questioned by a law enforcement officer;
6. You shall permit your probation officer to visit your home and any other places specified by the Court at all reasonable times.
7. Your further special conditions of deferral are as follows:
 - A. You shall follow all reasonable instructions which are given to you by your probation officer;
 - B. You shall not own or possess any firearms or ammunition. If you have any firearms or ammunition, you must immediately turn them in to the appropriate county police department.

Your further terms and conditions of deferral are attached.

WARNING:

IF YOUR WHEREABOUTS BECOME UNKNOWN TO YOUR PROBATION OFFICER BECAUSE OF YOUR FAILURE TO KEEP HIM/HER INFORMED, THE COURT MAY ORDER YOUR ARREST. UPON ANY FAILURE TO COMPLY WITH EACH OF THE TERMS AND CONDITIONS OF YOUR DEFERRAL, INCLUDING SPECIAL CONDITIONS, THE COURT MAY ACCEPT YOUR GUILTY PLEA AND SENTENCE YOU IN THIS CASE.

YOU ARE FURTHER INFORMED THAT YOU ARE PROHIBITED FROM OWNING OR POSSESSING ANY FIREARM OR AMMUNITION PURSUANT TO HRS § 134-7.

THE TERMS AND CONDITIONS OF DAGP HAVE BEEN EXPLAINED TO ME; I FULLY UNDERSTAND THEM, AGREE TO ABIDE BY THEM IN EVERY WAY AND UNDERSTAND THE CONSEQUENCES. I HAVE RECEIVED A COPY OF THESE TERMS AND CONDITIONS OF DAGP.

DATE	DEFENDANT'S SIGNATURE	SIGNATURE OF PROBATION OFFICER
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Cr. No. 04-1-0019

State of Hawaii vs. HERBERT HIROTA

7. Special Conditions Of Deferred Acceptance of Guilty Plea (DAG)

YOU SHALL:

- A. Follow all reasonable instructions which are given to you by your probation officer;
- B. Not own or possess any firearms or ammunition. If you have any firearms or ammunition, you must immediately turn them in to the appropriate county police department;
- C. Work full time or attend educational/vocational training as approved by your probation officer throughout the period of deferral;
- D. Pay restitution in the amount of \$25,000;
- E. Pay to the crime victim compensation fund \$100;
- F. Pay the restitution and crime victim compensation fund fee at the rate of at least \$2000 per month. Payment shall be applied to the foregoing obligations in the same order as they are listed in this paragraph. Any modifications in the manner of payment must be approved by the court;
- G. As determined by your probation officer, participate in and complete service plan(s) in relation to your Level of Service Inventory - Revised and other assessment results on emotional/personal issues, attitude orientation, low self control, drugs and/or alcohol dependence, companions and family/marital relationships; and
- H. Perform 100 hours of community service, to commence by June 1, 2007, and to be completed by December 31, 2007.